

Initial Statement of Reasons

Hearing Date: September 18, 2014

Subject Matter of Proposed Regulations: License Application Processing

Sections Affected: Amend Section 3528 of Title 10 of the California Code of Regulations

Introduction

Federal law requires each state to adhere to federal mandates regarding the regulation of real estate appraisers. The Bureau of Real Estate Appraisers ("BREA") accomplishes this mandate in California.

In accordance with this mandate and state law, applicants for a BREA-issued license are subject to minimum licensing requirements established by the federal Appraiser Qualifications Board of the Appraisal Foundation ("AQB"), as incorporated by reference into Business and Professions Code § 11314 (*"Requirements for each level of licensure shall, at a minimum, meet the criteria established by the Appraiser Qualifications Board of the Appraisal Foundation"*), and Title 10 CCR § 3500(b)(1) and 3528(a); also see, Bus. & Prof. Code § 11340(c.) Federal law requires this in each state.

AQB minimum licensing requirements were previously amended effective 1/1/2008. Section 3528(b) was amended to evaluate license applications in the 2007/2008 change over period.

In December 2011, the AQB further amended the minimum licensing requirements with an effective date of 1/1/2015. The amended requirements, among other things, increase the education requirement.¹

This proposed amendment clarifies the process of determining the evaluation date of license applications for purposes of applying the licensing requirements. Specifically, this proposed rulemaking specifies that a license application will be evaluated when certain requirements such as education and experience are complete and the applicant passes the examination. If such requirements are complete in 2014, the application is subject to existing (pre-1/1/2015)

¹ BREA, federal entities, and other parties have thoroughly publicized the amended licensing requirements beginning roughly two years prior to the 1/1/2015 effective date via BREA's website, the federal Appraisal Subcommittee's website, local, regional, and national industry association meetings, direct emails, and other means. This advance notice has given ample disclosure to applicants, licensees, and other affected parties.

requirements. If such requirements are not completed until 2015, the application is subject to the new (effective 1/1/2015) requirements.

This rulemaking is a procedural clarification because current existing implied authority requires that applicants completing licensing requirements in 2014 are subject to the requirements in effect in 2014 and applicants completing licensing requirements in 2015 are subject to the requirements in effect in 2015. This proposed action merely makes that implied authority explicit.

Identification of the Problem; Proposed Solution; and Necessity

Existing Section 3528 addresses the process of meeting minimum licensing requirements. However, in its current form, it is partially irrelevant and somewhat unclear.

1. Delete Outdated Language

Problem. Existing Section 3528(b) is obsolete because it addresses applicants undertaking the licensure process in 2007/2008. Thus, existing Section 3528(b) is not applicable to current applicants.

Additionally, applicants may be misled to believe the experience exception provided in subdivision (b) applies to current applicants.² This is not true and the language should be removed to prevent any possible confusion. Pursuant to AQB's increased standards, all requirements, including the experience requirement, must be completed prior to January 1, 2015 in order for the applicant to be subject to pre-January 1, 2015 requirements.

Proposed Solution and Necessity. The outdated language should be deleted. This will aid clarity. The deletion is necessary because applicants seeking licensure in 2014/2015 should be able to ascertain what requirements apply without the burden of reviewing irrelevant regulations.

2. Determining the evaluation date for applicants in 2014/2015

Problem. Existing regulations do not expressly specify when an applicant is subject to the current requirements (in effect through 12/31/2014) and when the applicant is subject to the 2015 requirements (effective 1/1/2015). The process of qualifying for licensure (*e.g.* successfully meeting education, experience, and examination requirements), and the application process itself (establishing to BRE that the requirements are met), may take place in stages over several months. That is, the applicant may submit an application in 2014, but not

² "Applicants who have completed the education requirements prior to January 1, 2008, may complete the experience requirement after January 1, 2008."

pass the examination to complete the application until 2015. In that case the applicant is subject to 2015 standards, but the regulations do not specifically address this type of situation.

Also, while existing section 3528(b) addresses education and experience requirements for purposes of determining the evaluation date, it fails to similarly address the examination requirement. Effective 1/1/2015, AQB criteria eliminates the “segmented scenario.” This means an applicant cannot complete a segment or portion of the application (education, experience, examination) and be deemed to have satisfied the segment completed when the segment was completed. Instead, the entire application (all segments) must be completed in 2014 in order to be subject to the 2014 requirements. Otherwise, if one segment, such as an examination, is not completed until 2015, all segments must meet 2015 requirements.³

Proposed Solution and Necessity. Add language relevant to applicants in 2014/2015. Added language clarifies when an applicant is subject to the current (pre-1/1/2015) requirements and when the applicant is subject to the requirements effective 1/1/2015.

The added language informs applicants, potential applicants, and otherwise interested parties, what requirements they are subject to at what point in time. That point in time – the evaluation date – is determined by the final completion date of various requirements.

Specifically, the proposed additions inform those engaged in the process of obtaining qualifying education or experience, or those planning to take the qualifying examination, or those completing required application forms, that the completion date of all such requirements determines the evaluation date. If the evaluation date is in 2014, the 2014 requirements apply. If the evaluation date is in 2015, the 2015 requirements apply.

The added language is necessary for clarity. An applicant invests a great deal of resources into qualifying for licensure. Such applicant should be able to ascertain with reasonable certainty whether, and when, they are subject to new qualification requirements without having to refer to AQB.

Further, the addition of this clarification is beneficial to the public, regulators, or any interested parties. It is beneficial because it obviates any potential confusion or resource expenditure associated with ascertaining the clarification the proposed added language otherwise provides.

3. “Complete Application”

Problem. Existing Section 3528 does not specifically define “complete application.” Since a complete application is important to determining the evaluation date, and thus the applicable

³ “Major revisions [to the 2015 requirements] include: ... Removal of the “Segmented” Approach to implementation of the *Real Property Appraiser Qualification Criteria*”

requirements, the regulation should stress that completing education and experience requirements is prerequisite to a complete application.

Proposed Solution and Necessity. Clarify that, as a prerequisite to filing a “complete application,” an applicant is required to complete the education and experience requirements (as provided in subsection (a).) They are not the only prerequisites, but they are necessary prerequisites.

Existing authority, including forms incorporated by reference, already set forth application requirements. However, further specificity, for purposes of the amended section, is necessary for improved clarity.

An applicant invests a great deal of resources into qualifying for licensure. Such applicant should be able to ascertain with reasonable certainty whether, and when, they are subject to new qualification requirements without having to refer to the AQB criteria.

Further, the addition of this clarification is beneficial to the public, regulators, or any interested parties. It is beneficial because it obviates any potential confusion or resource expenditure associated with ascertaining the clarification the proposed added language otherwise provides.

4. “Applicant”

Problem. Although reasonably capable of interpretation, the existing section does not specifically define “applicant.” It is well understood that “applicant” includes those who hold no BREA-issued credential of any sort and who are in the process of initially applying for a license. It is less clear that “applicant” includes those who hold one type of BREA-issued credential and are in the process of applying for a different type of BREA-issued credential. The absence of this clarification may lead to the creative interpretation that “applicant” does not include existing credential holders applying for a different credential.

Proposed Solution and Necessity. Clarify the definition of “applicant.” Specifically, for purposes of the amended section, clarify that “applicant” includes those who hold one type of BREA-issued license and who are applying for a different type of BREA-issued license.

The added language is a specification rather than a definition. It does not expressly define “applicant” – that is, does not explicitly delineate or enumerate exactly who is, and is not an applicant. It simply clarifies that, in addition to the clearly accepted and understood definition, “applicant” includes individuals in certain circumstances for purposes of this section (e.g. it may include existing credential-holders).

Further, the addition of this clarification is beneficial to the public, regulators, or any interested parties. It is beneficial because it obviates any potential confusion or associated resource

expenditure associated with ascertaining the clarification the proposed added language provides.

Specific Changes; Factual Basis/Rationale; and Anticipated Benefits

Numbers 1-4 below correspond with the above:

1. Delete Outdated Language

Proposed Change: Delete the entirety of existing subsection (b) of Section 3528.

Rationale: BREa is required to implement and enforce AQB requirements. (See Bus. & Prof. Code §§ 11314 and 11340.) AQB requirements are changing effective 1/1/2015.

Existing Section 3528(b) is a vestige of the last time the AQB requirements changed (2007/2008). It is replete with references to dates in 2007 and 2008.

Further, the AQB has modified the methodology for determining the evaluation date. Specifically, they have eliminated the “segmented approach.” Successful completion of education, experience, and examination is now prerequisite to determining the evaluation date. Contrary to this changed methodology, existing Section 3528(b) incorporates the segmented approach that is not applicable to 2014/2015 applicants.

Because of the outdated references and inapplicable language, existing Section 3528(b) is moot and irrelevant. Because the entire subsection is replete with the irrelevant and misleading language, minor amendments are not possible.

The existing subsection is best deleted in its entirety and replaced with completely new text. With the number of changes required, minor surgical amendments are not feasible. Therefore, the existing subsection is best deleted (and replaced) in its entirety.

Anticipated Benefit: As provided above, deleting and replacing the existing language will provide clarity to applicants, licensees, and any affected persons or entities. Specifically, making the evaluation date certain and ascertainable by providing its methodology for determination allows affected parties to navigate the application process without the otherwise unnecessary expenditure of resources inherent in vague or nonexistent rules. Clear rules obviate the need for costly legal hearings, further preserving resources.

2. Determining the Evaluation Date for Applicants in 2014/2015

Proposed Change: Add a new subsection (b), replacing the deleted subsection (b). The new subsection (b) sets forth the methodology for determining the evaluation date for license applicants. That is, it specifies when an applicant is subject to (evaluated under) the current requirements (in effect through 12/31/2014) and when the applicant is subject to the 2015 requirements (effective 1/1/2015).

The added language requires that the date an applicant has successfully completed the requirements, as specified, determines the evaluation date. The evaluation date in turn determines whether the applicant is subject to the current (pre-1/1/2015) requirements or the 2015 requirements (effective 1/1/2015).

Specifically, the language provides that the education, experience, and examination requirements, pursuant to existing subsection (a), must be completed. Additionally, a complete application is reviewed when received by BREa. An applicant that has not successfully completed these requirements in 2014 is subject to the 2015 licensing requirements.

Though the examination requirement is set forth in associated sections, existing Section 3528 does not expressly refer to it. The added language expressly provides that a successfully completed examination is a prerequisite to determining the evaluation date.

Rationale: As provided above, existing authority establishes AQB minimum licensing requirements. Those requirements are changing effective 1/1/2015.

Applicants and potential applicants will have to conform to amended requirements, or not, depending on when they finish fulfilling the requirements. If they don't meet the 2014 requirements in 2014 then they're subject to the 2015 requirements.

Though that general rule is objectively reasonable and would be applicable even in absence of any clarification, clearly establishing the rules for determining whether or not the new requirements apply to any given applicant is manifestly just. Without clearly delineated rules, affected parties have no comfortably reliable guide by which to plan for meeting the education, experience, examination, and application requirements.

Clearly setting forth prerequisite requirements provides notice. Notice lets affected parties know what rules are in effect at what times. This allows them to plan accordingly.

Anticipated Benefit: As provided above, deleting and replacing the existing language will provide clarity to applicants, licensees, and any affected persons or entities. Specifying the evaluation date makes it certain and ascertainable. Providing its methodology allows

affected parties to navigate the application process without the otherwise unnecessary expenditure of resources inherent in vague or nonexistent rules. Thus, it is manifestly fair and just.

Clarity also allows applicants to more confidently navigate the application process thereby reducing the need for multiple follow-up questions and contacts. This has the added effect of increasing government efficiency and transparency.

Clear rules obviate the need for costly legal hearings. Thus further preserves resources for all parties.

3. Specify Terms – “Complete Application”

Proposed Change: Proposed subsection (b)(1) specifies that, at a minimum, a complete application includes completed education and experience requirements.

Rationale: BREa staff has sought to identify potential issues fashioned by creative interpretations. The inclusion of this proposed change is intended to prevent any potential argument that an application is complete despite the applicant not having successfully completed the education and experience requirements.

Though existing law reasonably establishes these requirements, they are set forth in related authority and only referenced in Section 3528. Reiterating these requirements buttresses that authority.

Anticipated Benefit: Adding clarity is manifestly fair and just. It will prevent unnecessary arguments regarding the interpretation of affected regulations. Such prevention reduces the possibility of costly legal proceedings thereby preserving resources for all affected parties.

Clarity also allows applicants to more confidently navigate the application process thereby reducing the need for multiple follow-up questions and contacts. This increases government efficiency and transparency.

4. Specify Terms – “Applicant”

Proposed Change: Specify that “applicant” includes existing BREa-issued license holders applying for a different BREa-issued license.

Rationale: Consistent with AQB criteria, BREa issues four different classes of real property appraiser licenses – “Trainee,” “Licensed Residential,” “Certified Residential” and “Certified General.” Further, BREa issues a non-federally recognized license pursuant to Section 3541(d).

The proposed language clarifies the definition of “applicant.” This clarification is intended to anticipate creative interpretation that may otherwise result from lack of a definition for this section.

Specifically, though the term “applicant” clearly includes those without any BREa-issued license initially applying for a BREa-issued license, it is less clear that it includes those currently holding a BREa-issued license applying for a different BREa-issued license. Without the clarification, some may unreasonably argue that a Licensed Residential appraiser seeking to become a Certified Residential appraiser is merely amending their license, rather than applying for a new license (or similar).

This incorrect interpretation would allow existing license holders seeking a different license to be “grandfathered-in” thereby escaping the new licensing requirements. Pursuant to all applicable law, there is no intention or reasonable basis for any such interpretation. Accordingly, the proposed language makes that conclusion abundantly clear.

Anticipated Benefit: Adding clarity will prevent unnecessary arguments regarding the interpretation of affected regulations. Such prevention reduces the possibility of costly legal proceedings thereby preserving resources for all affected parties.

Clarity also allows applicants to more confidently navigate the application process thereby reducing the need for multiple follow-up questions and contacts. This has the added effect of increasing government efficiency and transparency.

ECONOMIC IMPACT ANALYSIS

As provided above, existing authority sets forth appraiser licensing requirements.⁴ Some of those requirements are changing effective 1/1/2015.

Such changes are relevant to, but not affected by, this proposed regulation. This proposed regulation does not enact, establish, or amend either the current licensing requirements, or the requirements made effective 1/1/2015. Rather, this proposal clarifies the method of determining the effective date of such requirements for purposes of the BREa application process.

It is a clarification because it is objectively clear, even in absence of this proposal, that applicants completing requirements in 2014 must comply with the 2014 requirements and

⁴ “Requirements” here refers to the education, experience, and examination requirements pursuant to Section 3528(a).

applicants completing requirements in 2015 must comply with the 2015 requirements. Existing authority requires this conclusion.

Initial Determination

The Bureau of Real Estate Appraisers has made the initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

- **Analysis of creation/elimination of jobs:** There are currently about 12,000 BRE licensees, of whom 20-25% may appraise commercial property in addition to residential. This rulemaking is not expected to directly or indirectly affect these numbers. This expectation is based on the fact that the clarifications do not increase or decrease compliance requirements. Rather, they spell out existing legal authority.

BREA currently receives over 500 license applications per month. (This number includes renewals but omits appraisal management company certificate of registration applications). This rulemaking is not expected to directly or indirectly affect these numbers. This expectation is based on the fact that the clarifications do not increase or decrease compliance requirements. Rather, they explicate the interpretation of existing legal authority.

Five full-time BRE employees currently process license and certificate applications. Three other employees also partially process applications as needed. This rulemaking is not expected to directly or indirectly affect these numbers. This expectation is based on the fact that the clarifications do not increase or decrease compliance or processing requirements. Rather, they make clear the interpretation of existing legal authority.

Over one million property appraisal reports are ordered and delivered in California each year. The appraisals are used for sales/purchases, refinancing, litigation, estate planning, eminent domain, and other purposes. This rulemaking is not expected to directly or indirectly affect this number. This expectation is based on the fact that the clarifications do not increase or decrease compliance requirements. Rather, they elucidate interpretation of existing legal authority.

- **Analysis of creation/elimination of businesses:** The proposed evaluation date clarifications are not expected to, directly or indirectly, lead to the creation or elimination of any new businesses. This is so because the clarifications do not create or eliminate any requirements for business – they merely make the interpretation of existing law easier.
- **Analysis of expansion of business:** The proposed evaluation date clarifications are not expected to, directly or indirectly, lead to the expansion of new businesses within California. This is so because the clarifications do not provide incentives or disincentives for business – they merely elucidate existing law.
- **Benefits of the Regulation to the Health and Welfare of California Residents, Worker Safety, and the State’s Environment:** BREa has determined that this regulatory proposal will benefit the health and welfare of California residents because making the rules clear is good public policy. Making legal authority certain and ascertainable is manifestly just. Clear rules obviate the need for costly legal hearings, which preserves public resources, thereby benefitting all taxpayers. Clarity also increases government efficiency and transparency by reducing the need for multiple follow-up questions and contacts with government agencies. The proposal will have no effect on worker safety or the State’s environment.

As part of its Economic Impact Analysis, BREa has determined that its proposal will not affect the ability of California businesses to compete with other states by making it more costly to produce goods or services. The federally established minimum licensing requirements are mandatory for all 50 states, and they are changing on January 1, 2015 for all 50 states. It follows that legal authority in all 50 states is very similar regarding the effective date for purposes of processing license applications in 2014/2015. Thus, there is virtually no difference in license application processing requirements, as affected by these proposed regulations, between California and any other state. This proposal does not impact multiple industries.

Effect on Small Businesses: The majority of BREa appraiser licensees operate as small businesses. It is expected that most will not seek a different BREa-issued license from the one they already hold, and therefore will be unaffected by these regulations. Those that may seek a different license at some point in the future will also likely be unaffected because only those in the midst of the application process in 2014 or 2015 are affected. And to the extent they are affected by these regulations, the clarifications set forth within will only serve to benefit navigation of the application process.

Impact on Jobs/New Businesses: The Bureau has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs, businesses, or the expansion of businesses in the State of California.

Occupations/Businesses Impacted: The proposed regulation may impact individuals applying for a BREa-issued property appraiser credential. This may include individuals currently working in the appraiser profession.

Reporting Requirements: The proposed regulation does not set forth any new reporting requirements. The proposed regulation is relevant to licensing requirements and the application process – which involves reporting – but those requirements and processes are not affected by this proposed regulation.

Comparable Federal Regulations: None

Underlying Data

None

Business Impact

The Bureau has determined that this proposal will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment

☒ This regulation does not mandate the use of specific technologies or equipment

☐ This regulation mandates the use of specific technologies or equipment. Such mandates or prescriptive standards are required for the following reasons:

Considerations of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of BREa would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Alternatives Considered:

1. Do nothing. This alternative was rejected because BREa identified the need for removal of outdated language and clarification. Specifically, the increased clarification regarding when license applicants are subject to increased licensing requirements.
2. Only remove subdivision (b). This alternative was rejected because while it would remove outdated language, it failed to add clarifying language to aid applicants and ensure compliance with AQB criteria.
3. Adopt the regulation. BREa determined that this alternative is most feasible because it clarifies several potential misunderstandings of how and when BREa will apply new licensing requirements while removing outdated language.